THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.1657 of 2000

Dated : 05.07.2007

Between:

Panthala Ramayamma W/o late Paparao

…**PETITIONER**

And:

The Agent to the Government, East Godavari District
at Kakinada and others.

… **RESPONDENTS**

THE HON'BLE SRI JUSTICE V.V.S.RAO
WRIT PETITION No.1657 of 2000

ORDER:

This writ petition is filed against the orders of the first respondent dated 03.04.1995 in C.M.A.No.22 of 1990, seeking its invalidation.

Petitioner's grandfather purchased the land admeasuring Acs.1.97 in R.S.No.16/3 situated at Patharamavaram village of Gangavaram Mandal in East Godavari District, an agency area. The vendor was a tribal and he was the grandfather of the third respondent. The vendee gifted the property to his wife i.e., the mother of the petitioner. It is the case of the petitioner that her mother gave it as "pasupu kunkuma" at the time of her marriage and she all through has been cultivating the land. On a complaint given by the third respondent, the second respondent initiated action under Section 3(2) of the Andhra Pradesh Scheduled Areas Land Transfer Regulation, 1959, as amended by Regulation 1 of 1970 (Regulation, for brevity). By an order dated 17.12.1990, the second respondent, having found that the transaction is in violation of the Regulation, ordered ejectment of the petitioner and directed the Mandal Revenue Officer, Gangavaram, to take possession of the land and restore it to the third respondent. Aggrieved by said order dated 17.12.1990, petitioner

preferred C.M.A.No.22 of 1990, unsuccessfully. Though the Agent to Government dismissed the appeal on 03.04.1995, petitioner filed the present writ petition only on 03.02.2000 with a delay of five years. Petitioner contends that the counsel who appeared for her before the Agent to Government stopped practising law and she only came to know about the order passed by the Agent on 24.01.2000 and immediately thereafter, filed the present writ petition.

A counter affidavit is filed by the Agent to Government. It is stated that the transaction between Poloju Bullayya (grandfather of the third respondent) and Panthala Ramaswamy (grandfather of the petitioner) took place on 23.02.1921, without permission of the Agent to Government and therefore, the transaction is null and void under the provisions of the Agency Tracts Interest and Land Transfer Act, 1917 (for short " Act 1 of 1917). It is also alleged that another transaction, dated 10.04.1972 for Ac.1.00 between Moturi Daramma (mother of the petitioner) and Pebbili Appa Rao, is after coming into force of Regulation 1 of 1970, and being a transaction between non-tribal and non-tribal, it is void. It is also further averred that the transaction between the grandfather of the petitioner and the grandfather of the third respondent as well as the Gift Deed executed by the grandfather of the petitioner in favour of his daughter are hit by the provisions of the Regulation, as the third respondent and his family belong to Konda Kammari, which is a Scheduled Tribe. The writ petition is also opposed on the ground that the petitioner did not avail the remedy of revision under Section 6 of the Regulation.

Learned counsel for the petitioner submits that the transaction between the grandfather of the petitioner and the grandfather of the third respondent dates back to 23.02.1921, very much prior to coming into force the Regulation and therefore, the orders passed by the respondents are without jurisdiction. **Opposing** the writ petition, the learned Government Pleader submits that a transaction prior to Regulation 1 of 1959 between tribal and non-tribal is prohibited under Act 1 of 1917.

Admittedly, the transaction between the predecessors of the petitioner and the third respondent is prior to coming into force of Regulation 1 of 1959 or Regulation 1 of 1970. Merely because the transaction is before coming into force of Regulation 1 of 1959, the same cannot be treated as valid. Section 4 of Act 1 of 1917 prohibits such transaction. The said provision reads as under:

> **4. Transfer of immovable property by a member of a hill tribe:-**
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> (1) Notwithstanding any rule of law or enactment to the contrary, any transfer of immovable property situated within

> the Agency tracts by a member of a hill tribe shall be absolutely null and void unless made in favour of another member of a hill tribe, or with the previous consent in writing of the Agent or of any other prescribed officer.
>
> (2) Where a transfer of property is made in contravention of sub-section (1), the Agent or any other prescribed officer may, on application by anyone interested, decree ejectment against any person in possession of the property claiming under the transfer and may restore it to the transferor or his heirs.
>
> (3) Subject to such conditions as may be prescribed an appeal against a decree or order under sub-section (2) if made by the Agent shall lie to the State Government and if made by any other officer shall lie to the Assistant Agent or to the Agent as may be prescribed.

As seen, as per Section 4 of Act 1 of 1917, a transaction between a tribal and another tribal is alone saved, and all other transactions among the persons other than tribals are declared null and void, unless they are made with the previous consent in writing of the Agent, which means the Agent to Government, in the Districts of Godavari. This itself is sufficient to attract the provisions of Regulation 1 of 1959, because, a non-tribal, who is in possession of the land in tribal areas by virtue of a transaction which is void under Act 1 of 1917, cannot take the plea that such transaction is saved by Regulation 1 of 1959, as amended by Regulation 1 of 1970.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

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(V.V.S.RAO,J)

5th July, 2007.

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